

1 **FEDERAL ELECTION COMMISSION**
2
3 **FIRST GENERAL COUNSEL'S REPORT**
4

5 **MUR 6971**
6 DATE COMPLAINT FILED: October 1, 2015
7 DATE OF NOTIFICATION: October 6, 2015
8 DATE OF LAST RESPONSE: March 18, 2016
9 DATE ACTIVATED: May 10, 2016

10
11 EXPIRATION OF STATUTE OF LIMITATIONS:
12 March 13, 2020
13 ELECTION CYCLE: 2016
14

15 **COMPLAINANT:** Brad Woodhouse
16 American Democracy Legal Fund
17

18 **RESPONDENTS:** John Ellis Bush
19 Jeb 2016, Inc. and William Simon in his official
20 capacity as treasurer
21 Right to Rise USA and Charles R. Spies in his
22 official capacity as treasurer
23 Fred E. Cooper
24 Emil Henry
25 Trey McCarley
26 Kris Money
27 Deborah Aleksander
28

29 **RELEVANT STATUTES:** 52 U.S.C. § 30125
30 **AND REGULATIONS** 11 C.F.R. § 300.2
31

32
33 **INTERNAL REPORTS CHECKED:** Disclosure Reports; Commission Indices
34

35 **FEDERAL AGENCIES CHECKED:** None

36 **I. INTRODUCTION**

37 The Complaint alleges that individuals acting as agents of 2016 Presidential candidate
38 John Ellis "Jeb" Bush violated the soft money provisions of the Federal Election Campaign Act
39 of 1971, as amended (the "Act"), by soliciting non-federal funds for Right to Rise USA and
40 Charles R. Spies in his official capacity as treasurer (the "Super PAC"), an independent-
41 expenditure only political committee supporting Bush. The Complaint identifies two

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1 individuals, Emil Henry and Fred E. Cooper, who contributed to both the Super PAC and Bush's
2 authorized committee, Jeb 2016, Inc. and William Simon in his official capacity as treasurer
3 ("Jeb 2016"). The Complaint also identifies three fundraising consultants, Kris Money, Trey
4 McCarley, and Deborah Aleksander, who allegedly violated the Act by actively fundraising for
5 Jeb 2016 while simultaneously soliciting funds for the Super PAC.¹ Respondents each deny
6 violating the Act, contending that the individuals' activities for the Super PAC pre-dated Bush's
7 candidacy and that they did not act in their capacities as agents of Bush when soliciting funds for
8 the Super PAC.²

9 As set forth below, the available information is unclear as to whether Henry or Cooper
10 solicited non-federal funds at fundraisers while acting as agents of Bush. Accordingly, we
11 recommend that the Commission take no action at this time as to the allegation that Henry or
12 Cooper violated 52 U.S.C. § 30125(e). With respect to Money, McCarley, and Aleksander, the
13 record indicates that these respondents solicited, received, directed, transferred, or spent funds to
14 support Bush's candidacy while agents of both Jeb 2016 and the Super PAC.

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16
17 Therefore, we
18 recommend that the Commission find reason to believe that Money, McCarley, and Aleksander
19 violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing, transferring, or spending non-

¹ See Compl. at 3, 5 (Oct. 1, 2015).

² See Response of Emil Henry ("Henry Resp.") at 3 (Dec. 7, 2015); Response of Jeb Bush, Jeb 2016, and Fred Cooper ("Jeb 2016 Resp.") at 8-14 (Nov. 30, 2015); Response of Right to Rise USA, Florida Finance Strategies, Trey McCarley, and Kris Money ("RTR/FFS Resp.") at 3-4 (Mar. 18, 2016); Response of Deborah Aleksander ("Aleksander Resp.") at 5 (Dec. 9, 2015).

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1 federal funds on behalf of Bush,

2 Further, as discussed below, because a principal is liable for the actions
3 of its agents, we also recommend that the Commission find reason to believe that Bush, Jeb
4 2016, and the Super PAC violated 52 U.S.C. § 30125(e) in connection with the actions of
5 Money, McCarley and Aleksander. Finally, we recommend that the Commission authorize
6 compulsory process.

7 **II. FACTUAL AND LEGAL ANALYSIS**

8 **A. The Commission Should Take No Action at this Time with Respect to the**
9 **Alleged Solicitation of Non-Federal Funds on Behalf of Bush and Jeb 2016**
10 **By Emil Henry and Fred E. Cooper**

11
12 1. Emil Henry

13
14 According to the Complaint, on June 29, 2015, Henry actively participated in a Super
15 PAC event when he made a \$1,224.41 in-kind contribution for catering.⁴ Just days earlier on
16 June 24, Henry had co-chaired a breakfast reception for Bush's authorized campaign committee,
17 Jeb 2016, and reportedly raised \$27,000.⁵ The Complaint therefore concludes that Henry was
18 improperly raising non-federal funds for the Super PAC while acting as an agent for Bush.⁶

19 Henry argues that he could not have been an agent of Bush as a result of his in-kind
20 contribution to the Super PAC because it was actually made on March 13, 2015, well before
21 Bush declared his candidacy in June 2015.⁷ Henry also argues that the Complaint fails to allege
22 any facts showing that he acted with actual authority from Bush to solicit funds for the Super

4 Compl. at 3.

5 *Id.*

6 *Id.* at 5.

7 Henry Resp. at 3-4. *But see* First GCR at 15-18,

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1 PAC and states that he “does not concede that he has ever served as an agent of Mr. Bush’s or
2 Jeb 2016.”⁸ In contrast, Jeb 2016 states that Henry was a volunteer fundraiser for Jeb 2016, once
3 it was formed, and it authorized Henry to raise funds on its behalf.⁹

4 The Act prohibits a candidate, an agent thereof, or an entity directly or indirectly
5 established, financed, maintained or controlled by or acting on behalf of a candidate from
6 soliciting, receiving, directing, transferring, or spending funds in connection with a federal
7 election that do not comply with the limits, prohibitions, and reporting requirements of the Act.¹⁰
8 Commission regulations provide that, for the purpose of this “soft money” prohibition, an agent
9 is “any person who has actual authority, either express or implied,” to solicit, receive, direct,
10 transfer, or spend funds in connection with any election.¹¹ Further, the Commission has
11 previously determined that an individual acting as an agent of an entity that is directly or
12 indirectly established, financed, maintained, or controlled by the candidate is an agent of the
13 candidate as well.¹² However, the Commission has also advised that the Act’s prohibition on
14 raising non-federal funds does not extend to an individual, who is an agent of a federal candidate,
15 when he or she raises non-federal funds for another group or political committee and does not act

⁸ Henry Resp. at 4 n.13.

⁹ Jeb 2016 Resp. at 3.

¹⁰ 52 U.S.C. § 30125(e)(1)(A).

¹¹ 11 C.F.R. § 300.2(b)(3).

¹² Advisory Op. 2005-02 (Corzine) at 9 (“AO 2005-02”).

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1 on behalf of the candidate.¹³ With respect to a “single candidate committee”¹⁴ the Commission
2 has been divided on whether a candidate’s agent may solicit funds for that committee.¹⁵

3 Though Henry’s in-kind contribution to the Super PAC establishes that he was involved
4 with the Super PAC fundraiser held in March 2015 in some way, the record is unclear as to the
5 extent of his involvement, including whether he solicited funds for the Super PAC in connection
6 with the event. Further, there are apparent inconsistencies in Respondents’ representations
7 regarding whether Henry was an agent of Jeb 2016 (and thus could have violated section
8 30125(e) by soliciting, receiving, directing, transferring, or spending non-federal funds) in June
9 2015. Henry does not concede that he was a fundraising agent of Bush at any time, while Jeb
10 2016 asserts that Henry acted as a fundraising agent, albeit only after the committee was formed
11 following Bush’s declaration of candidacy in June 2015. Based only on this available
12 information, it is unclear whether Henry acted as his agent to solicit or spend non-federal funds
13 through the Super PAC at the time of his March 2015 in-kind contribution or at any other time.

¹³ See, e.g., Advisory Op. 2015-09 (Senate Majority PAC) at 7 (“AO 2015-09”) (citing Definition of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4979 (Jan. 31, 2006)) (“Agent E&J”).

¹⁴ AO 2015-09 at 2. “Single candidate committees” would raise non-federal funds “to support the [prospective candidates] if they decide to run for office” and “work directly’ with the prospective candidates.” *Id.* (citation omitted).

¹⁵ *Id.* at 7 n.4.

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2. Fred E. Cooper

The Complaint alleges that Cooper raised non-federal funds as an agent of Bush because on June 29, 2015, Cooper made a \$1,506 in-kind contribution for catering at a Super PAC fundraiser and co-hosted a fundraising reception for Jeb 2016 on that same day.¹⁷ Bush, Jeb 2016, and Cooper, in a joint response (“Jeb 2016 Response”), state that Jeb 2016 listed Cooper as a co-host on the Jeb 2016 fundraiser invitation after he pledged to donate \$2,700 for the event but deny that the Committee authorized Cooper to act on its behalf.¹⁸ Further, they argue that writing a check for catering does not constitute actual solicitation and that the Complaint presents no evidence that Cooper solicited funds on Bush’s behalf at the Super PAC fundraiser.¹⁹

Though the available information indicates that Cooper co-hosted a Jeb 2016 fundraiser at the same time he made an in-kind contribution to the Super PAC, the extent of his fundraising role for Jeb 2016, including whether he was given actual authority to raise funds on behalf of Bush, is unclear. Further, there is no information in the record that Cooper actually solicited or raised funds for the Super PAC, either at the fundraiser or elsewhere, outside of making an in-kind contribution for catering. Under these circumstances, we recommend that the Commission

¹⁷ Compl. at 2.

¹⁸ Jeb 2016 Resp. at 3.

¹⁹ *Id.* at 9.

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1 clients.³¹ Finally, Respondents rely on Advisory Opinion 2015-09 to contend that agents of
2 candidates may solicit non-federal funds so long as they are not acting on behalf of candidates.³²

3 The available information provides reason to believe that the FFS Respondents, Bush, Jeb
4 2016, and the Super PAC each violated 52 U.S.C. § 30125(e) in connection with the fundraising
5 arrangements described above. Agents of federal candidates are prohibited not only from
6 soliciting non-federal funds but also from receiving, directing, transferring, or spending such
7 funds in connection with federal elections.³³ Further, Commission regulations define solicitation
8 in the context of the soft money provisions as “to ask, request, or recommend, *explicitly* or
9 *implicitly*, that another person make a contribution, donation, transfer of funds, or otherwise
10 provide anything of value. . . . A solicitation may be made *directly* or *indirectly*.”³⁴

11 In addition, while the Commission has determined that agents of federal candidates may
12 raise non-federal funds for political parties or outside groups, Commission guidance has not
13 given unfettered approval for all such activity. For example, the Commission has concluded that
14 agents can raise non-federal funds on behalf of other organizations in circumstances where they
15 “act in their own capacities ‘exclusively on behalf of’ the other organizations when fundraising
16 for them, ‘not on the authority of’ the candidates, and raise funds on behalf of the candidates and
17 the other organizations ‘at different times.’”³⁵

³¹ See RTR/FFS Resp. at 2.

³² RTR/FFS Resp. at 3; Jeb 2016 Resp. at 13.

³³ See 52 U.S.C. § 30125(e)(1)(A).

³⁴ 11 C.F.R. § 300.2(m) (emphasis added).

³⁵ AO 2015-09 at 7 (citations omitted).

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1 Here, the record indicates that beginning in early 2015, the FFS Respondents agreed to
2 provide fundraising services to the Super PAC,

3 In June 2015, the FFS Respondents also became fundraising consultants for Jeb
4 2016 but concede that they continued to have a role in the fundraising activities of the Super
5 PAC. Though they attempt to minimize their continued role in the Super PAC's fundraising
6 activities after Bush declared his candidacy, given their prominent role in fundraising for the
7 Super PAC up to this point, their concession that they continued to participate in fundraising
8 discussions with the Super PAC, and their carefully worded statement that they ceased "direct"
9 solicitations (thus implying that they may have continued indirect solicitations), there is reason to
10 believe that the FFS Respondents, as agents of Bush, violated 52 U.S.C. § 30125(e) by soliciting,
11 receiving, directing, transferring, or spending funds in connection with a federal election that do
12 not comply with the limits, prohibitions, and reporting requirements of the Act.

13 The Complaint also argues that both Bush and Jeb 2016 should be held liable for their
14 agents' violations of section 30125(e). In its revised Explanation and Justification for the
15 regulatory definition of agent at section 300.2(b), the Commission stated that "the
16 candidate/principal may also be liable for any impermissible solicitations by the agent, despite
17 specific instructions not to do so."³⁷ Therefore, because we recommend that the Commission

³⁷ Agent E&J, 71 Fed. Reg. at 4978 (citing *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993) (determining that it is a settled matter of agency law that liability exists "for unlawful acts of [] agents, provided that the conduct is within the scope of the agent's authority); Restatement 216 ("A master or other principal may be liable to another whose interests have been invaded by the tortious conduct of a servant or other agent, although the principal does not personally violate a duty to such other or authorize a conduct of the agent causing the invasion."); Restatement 219(1) ("A master is subject to liability for the torts of his servant committed while acting in the scope of their employment.")). Liability will attach, however, where the agent is acting on behalf of the principal, and not due solely to the agency relationship. *Id.*

1 find reason to believe that the FFS Respondents violated section 30125(e) as agents of Bush, Jeb
2 2016, and the Super PAC, we recommend that the Commission find reason to believe that Bush,
3 Jeb 2016, and the Super PAC violated 52 U.S.C. § 30125(e).

4 **III. INVESTIGATION**

5
6 the investigation into the FFS
7 Respondents' fundraising activities on behalf of both the Super PAC and Jeb 2016 will focus on
8 gathering facts relevant to whether Money, McCarley, and Aleksander solicited, received,
9 directed, transferred, or spent non-federal funds on behalf of Bush,
10 and particularly when they became fundraising agents of Jeb 2016 in June 2015. We will seek to
11 conduct our investigation through voluntary means but recommend that the Commission
12 authorize the use of compulsory process, including the issuance of appropriate interrogatories,
13 document subpoenas, and deposition subpoenas, as necessary.

14 **IV. RECOMMENDATIONS**

- 15 1. Take no action at this time as to Emil Henry;
16 2. Take no action at this time as to Fred E. Cooper;
17 3. Find reason to believe that Kris Money, Trey McCarley, and Deborah Aleksander
18 violated 52 U.S.C. § 30125(e);
19 4. Find reason to believe that John Ellis Bush, Jeb 2016, Inc. and William Simon in his
20 official capacity as treasurer, and Right to Rise U.S.A. and Charles R. Spies in his
21 official capacity as treasurer violated 52 U.S.C. § 30125(e);
22 5. Approve the attached Factual and Legal Analyses;
23 6. Authorize compulsory process; and
24 7. Approve the appropriate letters.

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Date: 12/29/17

Lisa J. Stevenson
Acting General Counsel

Kathleen M. Guith
Kathleen M. Guith
Associate General Counsel

Jin Lee
Jin Lee
Acting Assistant General Counsel

Anne B. Robinson
Anne B. Robinson
Attorney

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Deborah Aleksander MUR 6971

I. INTRODUCTION

The Complaint alleges that individuals acting as agents of 2016 Presidential candidate John Ellis “Jeb” Bush violated the soft money provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), by soliciting non-federal funds for Right to Rise USA (the “Super PAC”), an independent-expenditure only political committee supporting Bush. The Complaint also identifies a fundraising consultant, Deborah Aleksander, who allegedly violated the Act by actively fundraising for Jeb 2016, Inc. (“Jeb 2016”) while simultaneously soliciting funds for the Super PAC.¹ Aleksander denies violating the Act, contending that her activities for the Super PAC pre-dated Bush’s candidacy and that she did not act in her capacity as an agent of Bush when soliciting funds for the Super PAC.²

As set forth below, the record indicates that Aleksander solicited, received, directed, transferred, or spent funds to support Bush’s candidacy while an agent of both Jeb 2016 and the Super PAC. Therefore, the Commission finds reason to believe that Aleksander violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing, transferring, or spending non-federal funds on behalf of Bush.

¹ See Compl. at 3, 5 (Oct. 1, 2015).

² See Response of Deborah Aleksander (“Aleksander Resp.”) at 5 (Dec. 9, 2015).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 Deborah Aleksander was an independent contractor for Florida Finance Strategies
3 (“FFS”), a fundraising consulting firm.³ The Commission has information indicating that FFS
4 provided fundraising consulting services to the Super PAC in early 2015, prior to Bush declaring
5 his candidacy in June 2015. Part of FFS’s duties reportedly included soliciting potential donors
6 to support the Super PAC. The Commission has additional information indicating that shortly
7 after Bush declared his candidacy, FFS entered into an agreement with LKJ, LLC (“LKJ”), Jeb
8 2016’s “primary fundraising consultant,” whereby FFS agreed to provide fundraising
9 subcontractors to Jeb 2016 as necessary. Further information indicates that in July 2015, FFS
10 entered into a contract with CGLW, LLC (“CGLW”), another consulting firm, to provide
11 fundraising consulting services to CGLW’s clients, which included the Super PAC.

12 Citing news reports, the Complaint alleges that Aleksander “simultaneously worked as
13 [a] fundraiser[.]” for both Jeb 2016 and the Super PAC and thus violated the soft money
14 prohibitions of the Act as an agent of a federal candidate who also raised non-federal funds.⁴
15 The Complaint acknowledges that agents of federal candidates may “wear two hats” but asserts
16 that such agents can do so only when they are not acting on behalf of the candidates.⁵ The
17 Complaint argues that “Commission precedent has not been extended to permit an agent of a
18 candidate to raise soft money when that soft money will be used to aid the candidate on whose
19 behalf the agent is working.”⁶

³ Aleksander Resp. ¶ 6.

⁴ Compl. at 3, 5 (citing Alex Isenstadt and Marc Caputo, *Top Jeb Fundraisers Leave Campaign Amid Troubling Signs*, POLITICO (Aug. 29, 2015)).

⁵ *Id.* at 4.

⁶ *Id.*

1 role in fundraising for the Super PAC up to this point, her concession that she continued to
2 participate in fundraising discussions with the Super PAC, and her carefully worded statement
3 that she ceased "direct" solicitations (thus implying that she may have continued indirect
4 solicitations), there is reason to believe that Aleksander, as an agent of Bush, violated 52 U.S.C.
5 § 30125(e) by soliciting, receiving, directing, transferring, or spending funds in connection with
6 a federal election that do not comply with the limits, prohibitions, and reporting requirements of
7 the Act.

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FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: John Ellis Bush MUR 6971
Jeb 2016, Inc. and William Simon in his official
capacity as treasurer

I. INTRODUCTION

The Complaint alleges that individuals acting as agents of 2016 Presidential candidate John Ellis "Jeb" Bush violated the soft money provisions of the Federal Election Campaign Act of 1971, as amended (the "Act"), by soliciting non-federal funds for Right to Rise USA and Charles R. Spies in his official capacity as treasurer (the "Super PAC"), an independent-expenditure only political committee supporting Bush. The Complaint identifies three fundraising consultants, Kris Money, Trey McCarley, and Deborah Aleksander, who allegedly violated the Act by actively fundraising for Jeb 2016, Inc. ("Jeb 2016") while simultaneously soliciting funds for the Super PAC.¹ Respondents deny violating the Act, contending that the individuals' activities for the Super PAC pre-dated Bush's candidacy and that they did not act in their capacities as agents of Bush when soliciting funds for the Super PAC.²

As set forth below, the record indicates that Money, McCarley, and Aleksander solicited, received, directed, transferred, or spent funds to support Bush's candidacy while agents of both Jeb 2016 and the Super PAC. Because a principal is liable for the actions of its agents, the Commission finds reason to believe that Bush and Jeb 2016 and William Simon in his official capacity as treasurer violated 52 U.S.C. § 30125(e) in connection with the actions of Money, McCarley, and Aleksander.

¹ See Compl. at 3, 5 (Oct. 1, 2015).

² See Response of Jeb Bush and Jeb 2016 ("Jeb 2016 Resp.") at 8-14 (Nov. 30, 2015).

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1 **II. FACTUAL AND LEGAL ANALYSIS**

2 According to information in possession of the Commission, Kris Money and Trey
3 McCarley are principals of Florida Finance Strategies (“FFS”), a fundraising consulting firm,
4 and Deborah Aleksander was an independent contractor for FFS. FFS provided fundraising
5 consulting services to the Super PAC in early 2015, prior to Bush declaring his candidacy in
6 June 2015. Part of FFS’s duties reportedly included soliciting potential donors to support the
7 Super PAC. Shortly after Bush declared his candidacy, FFS entered into an agreement with LKJ,
8 LLC (“LKJ”), Jeb 2016’s “primary fundraising consultant,” whereby FFS agreed to provide
9 fundraising subcontractors to Jeb 2016 as necessary.³ Further, the Commission is aware of
10 information indicating that in July 2015, FFS entered into a contract with CGLW, LLC
11 (“CGLW”), another consulting firm, to provide fundraising consulting services to CGLW’s
12 clients, which included the Super PAC.

13 Citing news reports, the Complaint alleges that Money, McCarley, and Aleksander
14 “simultaneously worked as fundraisers” for both Jeb 2016 and the Super PAC and thus violated
15 the soft money prohibitions of the Act as agents of a federal candidate who also raised non-
16 federal funds.⁴ The Complaint acknowledges that agents of federal candidates may “wear two
17 hats” but asserts that such agents can do so only when they are not acting on behalf of the
18 candidates.⁵ The Complaint argues that “Commission precedent has not been extended to permit

³ *Id.* at 3.

⁴ Compl. at 3, 5 (citing Alex Isenstadt and Marc Caputo, *Top Jeb Fundraisers Leave Campaign Amid Troubling Signs*, POLITICO (Aug. 29, 2015)).

⁵ *Id.* at 4.

1 an agent of a candidate to raise soft money when that soft money will be used to aid the
2 candidate on whose behalf the agent is working.”⁶

3 There is no dispute that Money, McCarley, and Aleksander simultaneously served as
4 fundraising consultants for both the Super PAC and Jeb 2016 from June through August 2015.
5 However, after Bush declared his candidacy in June 2015, the FFS consultants apparently ceased
6 making any direct fundraising solicitations for the Super PAC and only occasionally participated
7 in internal discussions and conference calls with the Super PAC’s finance committee. Further,
8 Jeb 2016 indicates that its contracts with its fundraising consultants prohibited the consultants
9 from raising non-federal funds on behalf of Bush and from acting as his agent when making
10 solicitations for other committees.⁷ Respondents rely on Advisory Opinion 2015-09 to contend
11 that agents of candidates may solicit non-federal funds so long as they are not acting on behalf of
12 candidates.⁸

13 The available information provides reason to believe that Bush and Jeb 2016 violated
14 52 U.S.C. § 30125(e) in connection with the fundraising arrangements described above. Agents
15 of federal candidates are prohibited not only from soliciting non-federal funds but also from
16 receiving, directing, transferring, or spending such funds in connection with federal elections.⁹
17 Further, Commission regulations define solicitation in the context of the soft money provisions
18 as “to ask, request, or recommend, *explicitly* or *implicitly*, that another person make a

⁶ *Id.*

⁷ Jeb 2016 Resp. at 3-4.

⁸ *Id.* at 13.

⁹ See 52 U.S.C. § 30125(e)(1)(A).

1 contribution, donation, transfer of funds, or otherwise provide anything of value. . . . A
2 solicitation may be made *directly or indirectly*.”¹⁰

3 Here, the record indicates that beginning in early 2015, Money, McCarley, and
4 Aleksander agreed to provide fundraising services to the Super PAC. In June 2015, Money,
5 McCarley, and Aleksander also became fundraising consultants for Jeb 2016 but continued to
6 have a role in the fundraising activities of the Super PAC. Given their prominent role in
7 fundraising for the Super PAC up to this point, their continued participation in fundraising
8 discussions with the Super PAC, and information indicating that they ceased “direct”
9 solicitations (thus implying that they may have continued indirect solicitations), Money,
10 McCarley, and Aleksander, as agents of Bush, appear to have violated 52 U.S.C. § 30125(e) by
11 soliciting, receiving, directing, transferring, or spending funds in connection with a federal
12 election that do not comply with the limits, prohibitions, and reporting requirements of the Act.

13 In its revised Explanation and Justification for the regulatory definition of agent at
14 section 300.2(b), the Commission stated that “the candidate/principal may also be liable for any
15 impermissible solicitations by the agent, despite specific instructions not to do so.”¹¹ Therefore,
16 the Commission finds reason to believe that Bush and Jeb 2016 and William Simon in his
17 official capacity as treasurer violated 52 U.S.C. § 30125(e).

¹⁰ 11 C.F.R. § 300.2(m) (emphasis added).

¹¹ Definition of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4978 (Jan. 31, 2006) (citing *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993) (determining that it is a settled matter of agency law that liability exists “for unlawful acts of [] agents, provided that the conduct is within the scope of the agent’s authority); Restatement 216 (“A master or other principal may be liable to another whose interests have been invaded by the tortious conduct of a servant or other agent, although the principal does not personally violate a duty to such other or authorize a conduct of the agent causing the invasion.”); Restatement 219(1) (“A master is subject to liability for the torts of his servant committed while acting in the scope of their employment.”)). Liability will attach, however, where the agent is acting on behalf of the principal, and not due solely to the agency relationship. *Id.*

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS:	Right to Rise USA and Charles R. Spies in his official capacity as treasurer Trey McCarley Kris Money	MUR 6971
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I. INTRODUCTION

The Complaint alleges that individuals acting as agents of 2016 Presidential candidate John Ellis “Jeb” Bush violated the soft money provisions of the Federal Election Campaign Act of 1971, as amended (the “Act”), by soliciting non-federal funds for Right to Rise USA and Charles R. Spies in his official capacity as treasurer (the “Super PAC”), an independent-expenditure only political committee supporting Bush. The Complaint identifies two fundraising consultants, Kris Money and Trey McCarley, who allegedly violated the Act by actively fundraising for Jeb 2016, Inc. (“Jeb 2016”) while simultaneously soliciting funds for the Super PAC.¹ Respondents deny violating the Act, contending that the individuals’ activities for the Super PAC pre-dated Bush’s candidacy and that they did not act in their capacities as agents of Bush when soliciting funds for the Super PAC.²

As set forth below, the record indicates that Money and McCarley solicited, received, directed, transferred, or spent funds to support Bush’s candidacy while agents of both Jeb 2016 and the Super PAC. Therefore, the Commission finds reason to believe that Money and McCarley violated 52 U.S.C. § 30125(e) by soliciting, receiving, directing, transferring, or spending non-federal funds on behalf of Bush. Further, as discussed below, because a principal

¹ See Compl. at 3, 5 (Oct. 1, 2015).

² See Response of Right to Rise USA, Florida Finance Strategies, Trey McCarley, and Kris Money (“RTR/FFS Resp.”) at 3-4 (Mar. 18, 2016).

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1 is liable for the actions of its agents, the Commission finds reason to believe that the Super PAC
2 violated 52 U.S.C. § 30125(e) in connection with the actions of Money and McCarley.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 Kris Money and Trey McCarley are principals of Florida Finance Strategies (“FFS”), a
5 fundraising consulting firm.³ According to the Super PAC, Money, and McCarley, FFS
6 provided fundraising consulting services to the Super PAC in early 2015, prior to Bush declaring
7 his candidacy in June 2015.⁴ Part of FFS’s duties reportedly included soliciting potential donors
8 to support the Super PAC.⁵ Shortly after Bush declared his candidacy, FFS entered into an
9 agreement with LKJ, LLC (“LKJ”), Jeb 2016’s “primary fundraising consultant,” whereby FFS
10 agreed to provide fundraising subcontractors to Jeb 2016 as necessary.⁶ In July 2015, FFS
11 entered into a contract with CGLW, LLC (“CGLW”), another consulting firm, to provide
12 fundraising consulting services to CGLW’s clients, which included the Super PAC.⁷

13 Citing news reports, the Complaint alleges that Money and McCarley (collectively “FFS
14 Respondents”) “simultaneously worked as fundraisers” for both Jeb 2016 and the Super PAC
15 and thus violated the soft money prohibitions of the Act as agents of a federal candidate who also
16 raised non-federal funds.⁸ The Complaint acknowledges that agents of federal candidates may
17 “wear two hats” but asserts that such agents can do so only when they are not acting on behalf of

³ *Id.* at 1.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*

⁸ Compl. at 3, 5 (citing Alex Isenstadt and Marc Caputo, *Top Jeb Fundraisers Leave Campaign Amid Troubling Signs*, POLITICO (Aug. 29, 2015)).

1 the candidates.⁹ The Complaint argues that “Commission precedent has not been extended to
2 permit an agent of a candidate to raise soft money when that soft money will be used to aid the
3 candidate on whose behalf the agent is working.”¹⁰

4 Respondents do not dispute that Money and McCarley simultaneously served as
5 fundraising consultants for both the Super PAC and Jeb 2016 from June through August 2015.
6 However, the FFS Respondents assert that after Bush declared his candidacy in June 2015, they
7 ceased making “any direct fundraising solicitations for [the Super PAC]” and only occasionally
8 participated in internal discussions and conference calls with the Super PAC’s finance
9 committee.¹¹ And the Super PAC and the FFS Respondents also assert that, although FFS
10 entered into an agreement to provide fundraising services to CGLW’s clients (which included the
11 Super PAC) at a time when FFS was also fundraising for Jeb 2016, that agreement specifically
12 prohibited FFS fundraising consultants from acting on behalf of CGLW clients when they were
13 raising funds on behalf of their other clients.¹² Finally, Respondents rely on Advisory Opinion
14 2015-09 to contend that agents of candidates may solicit non-federal funds so long as they are
15 not acting on behalf of candidates.¹³

16 The available information provides reason to believe that the Money, McCarley, and the
17 Super PAC each violated 52 U.S.C. § 30125(e) in connection with the fundraising arrangements
18 described above. Agents of federal candidates are prohibited not only from soliciting non-

⁹ *Id.* at 4.

¹⁰ *Id.*

¹¹ RTR/FFS Resp. at 3.

¹² *See id.* at 2.

¹³ *Id.* at 3.

1 federal funds but also from receiving, directing, transferring, or spending such funds in
2 connection with federal elections.¹⁴ Further, Commission regulations define solicitation in the
3 context of the soft money provisions as “to ask, request, or recommend, *explicitly* or *implicitly*,
4 that another person make a contribution, donation, transfer of funds, or otherwise provide
5 anything of value. . . . A solicitation may be made *directly* or *indirectly*.”¹⁵

6 Here, the record indicates that beginning in early 2015, the FFS Respondents agreed to
7 provide fundraising services to the Super PAC,

8 In June 2015, the FFS Respondents also became fundraising
9 consultants for Jeb 2016 but concede that they continued to have a role in the fundraising
10 activities of the Super PAC. Though they attempt to minimize their continued role in the Super
11 PAC’s fundraising activities after Bush declared his candidacy, given their prominent role in
12 fundraising for the Super PAC up to this point, their concession that they continued to participate
13 in fundraising discussions with the Super PAC, and their carefully worded statement that they
14 ceased “direct” solicitations (thus implying that they may have continued indirect solicitations),
15 there is reason to believe that the FFS Respondents, as agents of Bush, violated 52 U.S.C.
16 § 30125(e) by soliciting, receiving, directing, transferring, or spending funds in connection with
17 a federal election that do not comply with the limits, prohibitions, and reporting requirements of
18 the Act.

19 The Complaint also argues that both Bush and Jeb 2016 should be held liable for their
20 agents’ violations of section 30125(e). In its revised Explanation and Justification for the
21 regulatory definition of agent at section 300.2(b), the Commission stated that “the

¹⁴ See 52 U.S.C. § 30125(e)(1)(A).

¹⁵ 11 C.F.R. § 300.2(m) (emphasis added).

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1 candidate/principal may also be liable for any impermissible solicitations by the agent, despite
2 specific instructions not to do so.”¹⁶ Therefore, because the Commission finds reason to believe
3 that the FFS Respondents violated section 30125(e) as agents of Bush, Jeb 2016, and the Super
4 PAC, the Commission also finds reason to believe that the Super PAC violated 52 U.S.C.
5 § 30125(e).

¹⁶ Definition of “Agent” for BCRA Regulations on Non-Federal Funds or Soft Money and Coordinated and Independent Expenditures, 71 Fed. Reg. 4975, 4978 (Jan. 31, 2006) (citing *U.S. v. Investment Enterprises, Inc.*, 10 F.3d 263, 266 (5th Cir. 1993) (determining that it is a settled matter of agency law that liability exists “for unlawful acts of [] agents, provided that the conduct is within the scope of the agent’s authority); Restatement 216 (“A master or other principal may be liable to another whose interests have been invaded by the tortious conduct of a servant or other agent, although the principal does not personally violate a duty to such other or authorize a conduct of the agent causing the invasion.”); Restatement 219(1) (“A master is subject to liability for the torts of his servant committed while acting in the scope of their employment.”)). Liability will attach, however, where the agent is acting on behalf of the principal, and not due solely to the agency relationship. *Id.*

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